



United States Department of State

*Bureau of Political-Military Affairs  
Office of Defense Trade Controls*

Washington, D.C. 20520-0602

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 11, 1997

Delft Instruments, N.V.  
Mercuriusweg 1  
2624 BC Delft  
P.O. Box 103  
2600 AC Delft, The Netherlands

Attention: Mr. Rinze V. Kingma  
Chairman of the Executive Board  
and Chief Executive Officer

Re: Case No. E-96-070

Dear Mr. Kingma:

The Department of State (Department) has reason to believe and charges that Delft Instruments, N.V. (Delft) has committed one violation of the International Traffic in Arms Regulations (the ITAR).<sup>1/</sup>

The Department alleges that:

1. Delft is a Dutch Corporation doing business in the The Netherlands, the United States, Belgium and elsewhere.
2. In connection with the transactions underlying the allegations set forth below, Delft engaged in the export from the United States of defense articles as defined in Section 120.6 of the ITAR, and designated in the United States Munitions List (USML), Section 121.1(a) and Category XII, specifically a device designated as a defense article that was reexported as a component in two thermal imaging systems.

<sup>1/</sup>The International Traffic in Arms Regulations (22 C.F.R. Parts 120-130) implement the Arms Export Control Act (22 U.S.C. Sec.27

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<sup>1/</sup>The International Traffic in Arms Regulations (22 C.F.R. Parts 120-130) implement the Arms Export Control Act (22 U.S.C. § 2778).

Accordingly, the Office of Defense Trade Controls, United States Department of State has jurisdiction over Delft in connection with the allegations set forth below, pursuant to Section 120.1 of the ITAR.

3. On or about March 1991, the United States Customs Service under authority of Section 127.4 of the ITAR, began an investigation of Delft for suspected unlawful exports to Iraq and Jordan of the USML articles described in paragraph two above, in violation of Section 38 of the Arms Export Control Act (AECA) and Section 127.1 of the ITAR.
4. As a result of the investigation described above, the Department entered into a consent agreement with Delft on July 2, 1992 and imposed administrative sanctions on Delft by an order signed by the Assistant Secretary for Political-Military Affairs on August 11, 1992. The consent agreement and order authorized the imposition of administrative sanctions against Delft which were based upon certain representations Delft made to the Department related to the export of the defense articles to Iraq and Jordan, described in paragraphs two and three above.
5. From August 1991 through August 1992, Delft made representations to the Department that prior to February 1991, no member of the Executive Board of Delft knew of exports to Iraq and Jordan of prototypes of the USML articles described in paragraph two, and thus the export control documents associated with these exports. These representations concealed a material fact, that is, that in fact some member of the Executive Board of Delft did know of the export prior to February 1991.
6. Under Section 127.2 of the ITAR, it is unlawful to make a false statement, misrepresentation or to omit a material fact in connection with a document used in the regulation or control of defense articles. By making false statements and misrepresentations, and by omitting material facts in connection with the Department's consent agreement and order described in paragraph four above, Delft violated Section 127.2 of the ITAR. The Department thereby charges Delft with one (1) violation of Section 127.2 of the ITAR.

\* \* \* \* \*

Accordingly, administrative proceedings are instituted against CWP pursuant to Part 128 of the ITAR for the purpose of obtaining an Order imposing administrative sanctions. Administrative sanctions under the ITAR may include any or all of the following:

Revocation of licenses and other written approvals by, for or to Delft under Sections 126.7(a)(1) and (6);

- \* Prohibition from participating directly or indirectly in the export of any defense article or technical data or the furnishing of any defense service, for which a license or approval is required by the ITAR, under Section 127.7(a);

Debarment for a period of (3) three years or longer, under Section 127.7(a), and applicability of such debarment to any other person for the purpose of preventing evasion, as appropriate, under Section 127.9;

- Denial of applications for export licenses or other requests for written approvals by, for or to CWP under Section 127.7(a);
- \* Imposition of a civil penalty not to exceed \$500,000 per violation as set forth in Section 127.10.

\* \* \* \* \*

If you fail to answer the allegations contained in this letter within thirty (30) days after service, as provided in Section 128.5, such failure to answer the charges will be taken as an admission of the truth of the charges and may be treated as a default under Section 128.4.

You are entitled to a hearing on the record as provided in Section 128.8. If CWP wishes to have a hearing on the record, CWP must file a written demand for it with your answer.

You are entitled to be represented by counsel, and to seek a consent agreement. As provided in Section 128.2, the Department is referring this matter to the Presiding Official. As provided in Section 128.5, please mail or deliver your answer, written demand for oral hearings (if any) and supporting evidence to the Office of EAR Administrative Proceedings, United States Department of Commerce, Room H-4017, 14th Street and Constitution

Avenue, N.W., Washington, D.C. 20230. Additionally, mail or deliver a copy of same to the Director, Office of Defense Trade Controls, Department of State, Room 200, State Annex 6, Washington, D.C. 20522-0602.

Any questions should be directed to Carol Schwab, Esq., at the Office of Legal Adviser at (202) 647-7838.

Sincerely,

William J. Lowell  
Director